SUPREME COURT
FILED
SEP 26 2013
OFFICE OF THE CLERK

No. 08-1314

IN THE

Supreme Court of the United States

DELBERT WILLIAMSON, *et al.*,

Petitioners,

v.

MAZDA MOTOR OF AMERICA, INC., *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE

BRIEF OF DRI – THE VOICE OF THE DEFENSE BAR AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE[1]

DRI – The Voice of the Defense Bar ("DRI") is an international organization comprised of more than 22,000 attorneys involved in the defense of businesses and individuals in civil litigation. DRI is committed to enhancing the skills, effectiveness, and professionalism of defense attorneys around the globe. Therefore, DRI seeks to address issues germane to defense attorneys, to promote the role of the defense attorney, and to improve the civil justice system in America. DRI has long been a voice in the ongoing effort to make the civil justice system fairer and more efficient, and – where national issues are involved – consistent. To promote these objectives, DRI participates as *amicus curiae* in cases that raise issues of importance to its membership and to the judicial system.

DRI seeks to contribute to the Court's consideration of cases by offering its perspective when the experiences of its members may assist the Court in the decision-making process. DRI members represent federally-regulated businesses, often serving as national coordinating counsel for entities that manufacture products placed into the national stream of commerce. DRI members have extensive experience defending

1. In accordance with Supreme Court Rule 37.6, amicus curiae states that no counsel for any party authored this brief, either in whole or in part, and that no entity or person, aside from amicus curiae, its members, and its counsel, made a monetary contribution to the brief's preparation or submission. All parties have granted a blanket consent to the filing of this brief and all other amicus curiae briefs, through letters on file with the Clerk's office.

federally-regulated businesses in state tort litigation. DRI members are regularly called upon to inform and advise business clients about the potential liability they face based upon state tort law, and to discuss the permissible bounds of conduct. DRI members are asked to offer counsel regarding the parameters of permissible conduct as established by state tort law and the sometimes conflicting substantive obligations and duties imposed under federal law and federal regulations. Federally-regulated businesses seek such advice as a guide to conduct. DRI members are therefore well-positioned to offer this Court practical insight based on first-hand experience with the impact of state tort litigation on manufacturers such as Mazda that may be of assistance in deciding the issues raised in this appeal.

As the only national membership organization devoted to representing the interests of lawyers defending businesses and individuals in civil litigation, the issue of preemption is of great importance to DRI. When state tort litigation results in judgments against a business based on a particular design, or the presence or absence of a particular feature on a product, that outcome becomes a part of the body of law used by DRI members to offer advice and counsel to their clients regarding potential exposure and actionable conduct. Practically speaking, if tort litigation results in huge judgments for the use of a particular kind of lock on a car door, or the selection of a particular foot pedal design, or the choice of a seatbelt and airbag configuration, those judgments establish a rule or standard of conduct that will guide future design decisions. DRI has a strong interest in assuring that the prevailing law on preemption furthers the federal

regulatory purposes as provided by Congress and affords potential civil defendants clarity about permissible conduct and its outer limits.

The preemption doctrine is intended to effectuate the supremacy of federal law by ensuring that state tort claims do not frustrate Congressional purposes. In *Geier v. American Honda Motor Company, Inc.*, 529 U.S. 861 (2000), this Court found that state tort litigation can frustrate the purpose of a federal statute or regulation. As determined in *Geier*, where Congress sought to encourage flexibility or design choice, preemption is necessary to ensure that state tort law does not undermine or frustrate that purpose. Absent a preemption doctrine that bars state tort litigation in these circumstances, businesses in virtually every federally-regulated industry will be exposed to the threat of potentially-debilitating state tort liability. Despite a Congressional purpose of fostering design choice, DRI's members will inevitably need to counsel their clients to avoid options that can be used as a basis for state tort liability. The result will be to foreclose numerous options or design choices despite a federal regulatory desire to encourage choice. DRI therefore has a strong interest in assuring that this Court adopts a preemption rule that is capable of consistent application across the country and that preserves a sphere of choice if a statute (or a federal regulation) reflects a Congressional purpose to allow for flexibility.

SUMMARY OF THE ARGUMENT

Congress passed the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. § 1381 ("Safety Act") in an effort to establish uniform safety standards for the design and production of motor vehicles. The Safety Act contains an express preemption clause declaring that "[w]hen a motor vehicle safety standard is in effect under this chapter, a State or political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. § 30103(b)(1). The Safety Act further contains a "savings clause" providing that "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. § 30103(e).

This Court has interpreted the Safety Act to preempt state tort claims that frustrate Congressional purpose and run afoul of federal standards. *Geier v. American Honda Motor Company, Inc.*, 529 U.S. 861 (2000). In so doing, the Court has been careful to note that state tort judgments carry the effect of regulatory mandates that establish affirmative standards of conduct as effectively as legislation or administrative standards. Now, the Court is faced with another state tort claim seeking to do precisely that – create an affirmative standard of conduct that conflicts with federally-adopted standards and frustrates the flexibility the National Highway Traffic Safety Administration ("NHTSA") specifically provided for.

Disrupting the careful balance sought by Congress through the imposition of state tort liability will strip certainty from the state civil defense arena. Where, as here, NHTSA sought to preserve several options for rear seat restraint and safety design, the failure to impose preemption will unsettle the law, and impede federal regulatory purposes. Federally-regulated entities will be forced to make design and manufacturing decisions and otherwise conduct business in an environment where they are unable to predict their potential liability exposure. Differences in legal standards between individual states, and among the states themselves, will create varying and possibly inconsistent standards of conduct that will cause national manufacturers tremendous difficulty. Due to the retroactive nature of state tort liability, even the most prudent of defendants will be unable to insulate themselves from common law litigation. As a result, defendants may shy away from the design of new and better products where the risk of liability outweighs any benefits. Accordingly, this Court should affirm the lower court's decision and squarely hold that FMVSS 208 preempts petitioners' state-law tort claim.

ARGUMENT

PREEMPTION IS NECESSARY TO PROTECT THE DELIBERATE POLICY CHOICE EMBODIED IN NHTSA'S FMVSS 208, WHICH GAVE MANUFACTURERS FLEXIBILITY REGARDING THE TYPE OF SEATBELT TO USE IN REAR AISLE AND CENTER SEATS, AND TO PREVENT STATE TORT JUDGMENTS FROM OPERATING AS CONFLICTING REGULATORY MANDATES FRUSTRATING THE CONGRESSIONAL PURPOSE.

No matter what different approaches the Court has previously taken to determine whether a common law claim is preempted by federal law, it has agreed that the touchstone of preemption is first, and foremost, Congressional intent. *Geier v. American Honda Motor Company, Inc.*, 529 U.S. 861, 884 (2000); *Wyeth v. Levine*, 129 S.Ct. 1187, 1194 (2009); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996); *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963). Intent can take several forms. It may be "express," when Congress specifically includes in legislation a provision addressing that legislation's preemptive scope, or implied, when Congressional intent is not so expressly defined. In order to pay proper credence to Congressional intent, a state law that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," must be preempted. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

In determining whether state law claims are preempted, this Court has long recognized the impact

of state tort decisions in federally-regulated areas. *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-73 (2000); *San Diego Bldg Trades Council v. Garmon*, 359 U.S. 236, 245 (1959); *Savage v. Jones*, 225 U.S. 501, 533 (1912). A common law tort action establishes affirmative standards of conduct as effectively as legislative or administrative standards. As a result, state tort law, not federal legislation, will guide defendants' manufacturing, design, and business decisions, if defendants are no longer able to rely on the preemption doctrine to bar common law tort claims. In *Geier*, the Court held that state tort claims that would "frustrate the accomplishment of a federal objective" are preempted. *Geier*, 529 U.S. at 873. Absent preemption here, the potential for state tort verdicts will leave manufacturers unable to predict with any degree of certainty their potential liability exposure. As a result, the federal purpose of providing for flexibility regarding Type 1 and Type 2 seatbelts in rear and aisle seats will be lost. Accordingly, preemption is necessary to achieve the federal purpose.

A. Common law tort actions and judgments create regulatory mandates and prohibitions that frustrate a congressional purpose to permit choice or flexibility.

This Court has previously recognized the importance of limiting liability imposed by state tort law principles where it would amount to a regulatory mandate frustrating Congressional purposes. The Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331, *et. seq.*, is one example. The Act includes a provision which states that if cigarette packages carry

the statutorily mandated health warning, "[n]o requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes..." 15 U.S.C. § 1334(b). Although this preemption provision clearly prohibited individual states from imposing additional mandatory labeling or advertising requirements, for many years legal commentators took the opposite view on the theory that the terms "requirement" and "prohibition" may not bar liability imposed by state tort law principles. See Richard C. Ausness, *The Case for a "Strong" Regulatory Compliance Defense*, 55 Md. L. Rev. 1210, 1227 (1996). This Court resolved the issue in *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992), when it determined that the petitioner's state failure-to-warn claim was preempted to the extent it "required a showing that respondents' post-1969 advertising or promotions should have included additional, or more clearly tested, warnings." *Id.* at 524. The *Cipollone* Court reasoned the petitioner's common-law damages action was "premised on the existence of a legal duty, and it is difficult to say that such actions do not impose 'requirements or prohibitions.'" *Id.* at 522.

Cipollone is but one of numerous cases where this Court has, in the course of performing its preemption analysis, confronted arguments that jury verdicts pursuant to common law claims do not establish regulations, standards, or requirements and, thus, are not preempted by federal statutes or administrative regulations. *See, e.g., CSX Transp., Inc v. Easterwood*, 507 U.S. 658 (1993); *International Paper Co v. Ouellette*, 479 U.S. 481 (1987). *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996); *Asahi Metal Indus. Co. v. Superior Court*,

480 U.S. 102, 114-15 (1987). In each of these cases, this Court concluded that common law actions, whether grounded in federal or state law, established affirmative standards of conduct that modify behavior effectively as legislative or administrative enactments. *Medtronic*, 518 U.S. at 510 11 (O'Connor, J., concurring joined by Rehnquist, Ch. J., Scalia and Thomas, JJ.; *id.* at 504 (Breyer, J. concurring); *Cipollone*, 505 U.S. at 522-23; *Ouellette*, 479 U.S. at 495.

More recently, in *Geier*, 529 U.S. 861, the Court reiterated that state tort judgments may create affirmative standards of conduct by which defendants must comply with or be subject to liability, regardless of defendants' compliance with federal law. In *Geier*, the Court observed that a state verdict in the petitioner's defective design claim would create a "jury-imposed safety standard" that actually conflicted with the federal safety standards set forth in FMVSS 208. *Id.* at 871. Accordingly, the common law action was preempted, not by the express preemption provision of the National Traffic and Motor Vehicle Safety Act, but by the actual conflict between the common law action and the Department of Transportation standard requiring manufacturers to place driver's side airbags in some, but not all, of 1987 automobiles.

To the extent petitioners' amici suggest that preemption is inappropriate when the regulatory impact of a state tort judgment is diminished or altogether eliminated by the state court's ambition to compensate rather than regulate, this argument is unpersuasive. "It is the *effect* of the state action, not its *purpose* which determines if it is preempted." Timothy Walton and

Richard P. Campbell, *Effect of Federal Safety Regulations on Crashworthiness Litigation*, 22 Tort & Ins. L. J. 554, 564 (Summer 1987) (emphasis in original). The effect of state tort judgments on individual and business defendants is identical regardless of the purpose for which state tort liability is sought. Stated differently, even if the moving force behind a state tort claim is to compensate for injuries rather than to further standardize a federally-regulated area, requiring a business to pay remuneration is tantamount to developing a regulatory scheme. This Court observed this point in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 246-247 (1959), when it stated:

> Our concern is with delimiting areas of conduct which must be free from state regulation if national policy is to be left unhampered. Such regulation can be as effectively asserted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy. Even the States' salutary effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme.

The *Garmon* Court specifically recognized the regulatory effect of a tort judgment, namely, that it may cause a conflict with federal law. 22 Tort & Ins. L. J. at 563. Indeed, this endeavor to limit the regulatory impact of a state tort judgment supported the *Garmon* Court's

determination that a state law tort claim for damages caused by a union's picketing was preempted by the National Labor Relations Act. 359 U.S. at 246-248.

The potential impact of state tort judgments on defendants can be whittled down to a single statement: state tort judgments may make conduct actionable that was otherwise permissible. When the federal government, through an expert agency, provided for flexibility in design choices, as NHTSA did here through the passage of FMVSS 208, state tort law cannot be permitted to override that Congressional purpose. Accordingly, when a successful state common law action effectively establishes a "standard" which interferes with or stands as an impediment to the implementation of a comprehensive federal regulatory plan, the action must be preempted to avoid inherent inconsistency. See, e.g., *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995); *Ouelette*, 470 U.S. at 494; *Geier*, 529 U.S. at 871.

B. The mandates imposed by state tort judgments leave federally-regulated entities with no clear guide as to how to conform their conduct to the law, exposing businesses to unpredictable liability that may thwart necessary product innovation and will interfere with appropriate design choices that NHTSA intended to permit.

When the federal government, through Congress or an administrative or regulatory agency, establishes a comprehensive scheme for the regulation of specific conduct, persons or entities subject to those regulations must be able to understand the legal duties or requirements engendered. The ability to predict with

certainty liability exposure is of paramount importance to individual and business defendants, and is a driving force behind defendants' operating and production decisions. Here, through enactment of Federal Motor Vehicle Safety Standard 208, 49 C.F.R. § 571.208 (1987), NHTSA gave automobile manufacturers the flexibility to choose what type of seat belts to install in certain seating positions. In reliance on NHTSA's regulation, and the statutory language expressly signaling preemption of conflicting state regulations or standards, manufacturers have made design choices allowed by Congress and the federal agency assigned to implement the statute. Automobile manufacturers such as Mazda thus have a strong and legitimate reliance interest in the continued application of *Geier* where, as here, the regulation reflects a purpose of affording flexibility in design choice. This Court's refusal to follow *Geier* to preempt state tort claims predicated on the decision to require one of two permissible seat belt types will create enormous uncertainty. Lawyers counseling automobile manufacturers will be reluctant to suggest that manufacturers can depend on the ability to make design choices, even when a regulation appears to authorize the selected option. And manufacturers will therefore lose the benefit of a deliberate federal regulatory choice for several options to enhance Congressional objectives under the statute.

DRI members have a significant interest in a clear and consistent preemption doctrine so that they can properly advise their entity clients, which look to counsel to determine their legal obligations and the limits on design choices prior to liability exposure. If this Court eviscerates *Geier* and the long-standing rule that state

tort claims which frustrate Congressional purpose and conflict with federal law are preempted, attorneys will be unable to effectively do so. A major shift in *Geier*'s analysis, and in the scope of preemption, will create confusion. Furthermore, unpredictable and uncertain liability exposure may leave businesses hard-pressed to find affordable insurance to insulate them from unknown liability, thus driving up the cost of consumer products. Businesses may also be inclined to cease product innovation altogether to avoid costly state court liability they are wholly unable to predict. Only by adhering to a preemption rule that is capable of uniform application can these costly ills be dogged.

The National Highway Traffic Safety Administration ("NHTSA") relied on the original objectives of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Act"), 15 U.S.C. § 1381, in deciding to preserve the option of allowing automobile manufacturers to install either Type 1 or Type 2 belts in rear center and aisle seating positions. The Act's goal was to reduce the number of traffic accidents and traffic-related injuries and deaths through the issuance of safety standards promulgated by the administrator of NHTSA that took into account technological ability and other economic considerations. 49 C.F.R. 1.50(a) (1994); 49 U.S.C. § 30111(a); H.R. Rep. No. 89-1776, at 16 (1966). Consistent with that objective, NHTSA gave manufacturers the flexibility to install Type 2 (lap/shoulder) belts insofar as they were able to eradicate the safety and technical issues prevalent in Type 2 belts, but did not require manufacturers to do so. 54 Fed. Reg. at 46, 258. This flexibility was intended because NHTSA concluded that competing safety considerations existed, design choices

about seatbelts would be affected by changing design and use of various child restraints, and some seatbelt design choices could have an unintended adverse impact on entry and exit from the vehicle as well as decreasing public acceptance and use of the seatbelts.

Permitting state-law variations where the federal regulatory standard has been established, as petitioners advocate, creates confusion and undermines the certainty and efficiency sought by Congress. *Ouellette*, 479 U.S. at 495-96. Regulated entities are left in a vulnerable position about whether to follow conflicting federal or state law, as they are unable to depend on the ability to make the specific choices that the federal government allowed for. Because of the need to limit liability exposure, state tort law will guide the manufacturing and design decisions of federally-regulated entities. In addition, if *Geier* is altered as some amici suggest, manufacturers will no longer be able to rely on the preemption doctrine applying in any given case. Attempting to keep abreast of individual state law requirements would impose an almost impossible task on national product manufacturers, where the diversity in legal standards applied in different states may result in "identical cases...produc[ing] startlingly different results." S. Rep. 105-32, at *4 (1997); *Geier*, 529 U.S. at 871 (noting that "the rules of law that judges and juries create or apply in such suits may themselves similarly create uncertainty and even conflict, say, when juries in different States reach different decisions on similar facts").

The uncertainty in the automobile industry that will surely follow if this Court decides to reverse will come at

great costs. M. Stuart Madden, a Pace University School of Law professor, emphasized that the "cacophony of conflicting state liability and damage rules" is costly to both business and the public. S. Rep. 105-32, at 4. According to Madden, unpredictability of potential state court liability accounts for high insurance costs in the United States, which are anywhere from fifteen to twenty times greater than in Japan and Europe, respectively. *Id.* Art Kroetch, chairman of a small South Dakota machine tool manufacturing business, agreed that high insurance rates are driven by the insurers' inability "to accurately predict potential liability due to the disparity in state laws, unpredictability of where the product will be located initially, and later where it is sold and resold as used equipment." *Id.* In some instances, insurance rates are so high that businesses are unable obtain affordable coverage. *Id.*

Another negative effect of uncertainty is not so easily quantified. As a result of the inability to predict liability exposure, the innovation of new and beneficial products may be thwarted. This phenomenon has been readily observed in the area of medical devices and drug manufacturing. See, e.g., *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341, 350 (2001) ("As a practical matter, complying with the FDA's detailed regulatory regime in the shadow of 50 States' tort regimes will dramatically increase the burdens facing potential applicants-burdens not contemplated by Congress in enacting the FDCA and the MDA. Would-be applicants may be discouraged from seeking § 510(k) approval of devices with potentially beneficial off-label uses for fear that such use might expose the

manufacturer or its associates (such as petitioner) to unpredictable civil liability."); Margaret Gilhooley, *Innovative Drugs, Products Liability, Regulatory Compliance, and Patient Choice*, 24 Seton Hall L. Rev. 1481, 24 Seton Hall L. Rev. 1481, 1482 (1994) ("Presently, tort litigation and regulation by the Food and Drug Administration (FDA) provide these [safety] checks. Concerns have been raised, however, that the tort process, because of its uncertain standards, produces the unintended consequence of discouraging worthwhile innovation. Prescription drug manufacturers maintain that liability risks may cut into their innovative efforts."); Douglas G. Smith, *Preemption After Wyeth v. Levine*, 70 Ohio St. L.J. 1435, 1476-76 (2009) (noting that the costs "of unwarranted liability in appropriate circumstances...can be significant, preventing innovation and the development of pharmaceutical products that may have significant benefits.").

The same chilling effect would invade the automobile and other industries. Unpredictable exposure to state tort liability may chill automobile manufacturers from developing new systems in the important area of seatbelt and restraint design. To some extent, this is already occurring in other areas. S. Rep. 105-32, at *8-9 (noting that as of 1997, members of the Association for Manufacturing Technology (formerly known as the National Machine Tool Builders Association) spent seven times more money on product liability costs than on costs associated with research and development). If this Court permits individual states to impose liability on an auto manufacturer such as Mazda for doing just what NHTSA allowed it to do – as petitioners here argue – there is a perverse incentive for manufacturers to cease

innovation altogether. The threat of diminished innovation in the automobile industry due to uncertain state tort liability is particularly worrisome in today's climate, where environmental and climate changes have put the pressure on manufacturers to develop more fuel-efficient cars and trucks.

Where NHTSA has decided that the National Traffic and Motor Vehicle Safety Act provides for flexibility in automobile manufacture and design, as evidenced by FMVSS 208, state juries are not properly equipped to challenge those decisions. NHTSA and other expert agencies can easily conduct broad-based studies through the use of experts, hearings, and in-depth research, before passing federal standards and regulations. State courts trying to regulate through individual litigation do not have these tools. Although expert testimony is allowed in state tort actions, the testimony must be focused on relevant opinion testimony under state substantive law and evidentiary principles. Thus, it may not provide answers to the complex federal regulatory trade-offs that are embodied in a statute such as NHTSA. Most notably, juries are ill-equipped to evaluate overall regulatory policy or to determine whether a particular design choice is consistent with the outcome that Congress sought to achieve when it enacted legislation. Stated another way, a lay jury does not examine design choices from the broader perspective of the Safety Act; a jury conducts an exercise that is entirely retrospective, and looks at design choices from the perspective of their impact on a particular accident. Juries do not do well with the kind of polycentric balancing that NHTSA must do, when considering competing considerations inherent in

regulating a complex area such as automotive safety. Without preemption, state juries will be asked to do just that. Yet, juries notoriously fare poorly when attempting to adjudicate individual safety risks in the context of overall consumer benefits – quintessentially the kind of issue the NHTSA must confront every day. And many state tort regimes impose a rule or standard for liability that is based on a very different calculus from the purposes evident in a federal statute or regulation. In *Geier*, this Court recognized that the outcome of jury trials evaluating a product design under state tort law can frustrate Congressional intent and eliminate the options that NHTSA intended to permit. Laypersons applying state tort law cannot substitute for NHTSA, the expert agency congressionally delegated the role of meticulously balancing nuanced and sometimes competing nationwide goals. When a jury's view is substituted for NHTSA's deliberate choice, as petitioner encourages, a core aspect of the federal regulatory scheme – one critical to innovation – is lost.

Numerous amici have urged this Court to severely limit *Geier*, claiming it has been misapplied by lower courts and has resulted in confusion and inconsistent results. But *Geier* falls squarely within this Court's historic test for preemption. *Geier* applied the longstanding principle that when state tort law frustrates a Congressional purpose to allow flexible design choices, it will be preempted. To be sure, various lower courts have disagreed about whether other federal regulations preempt state tort law. Compare *O'Hara v. General Motors Corp.*, 508 F.3d 753 (5th Cir. 2007) with *Lake v. Memphis Landsmen, L.L.C.*, No. W2009-00526-COA-R3-CV, 2010 WL 891867, at *7 (Tenn.

Ct. App. Mar. 15, 2010). But these differences do not result from a weakness in *Geier* but stem from the difficulty of discerning the federal regulatory intent. Given the complexity of federal statutes and rules, such differences are inevitable. Some federal courts will read a statute or rule to evince a purpose of setting a minimum standard where others will read a maximum and still others may see a desire for options. But these occasional difficulties in discerning Congressional intent provide no warrant to upset longstanding preemption principles or to restrict the use of preemption to bar state tort litigation when it would frustrate the federal regulatory intent as discerned by the court.

Where federal law and state law conflict, federal law prevails. U.S. Const., Art. VI, cl. 2. Because state product liability common law decisions are akin to legislation in coercing manufacturers' behavior or enforcing public policy, these common law decisions can set standards that conflict with federal law. Such is the case here, where petitioners' product liability claim requiring automobile manufacturers to install Type 2 seat belts conflicts with Federal Motor Vehicle Safety Standard 208 allowing manufacturers the option to install either Type 1 or Type 2 seat belts in certain vehicle seats. As a result of the federal law, Standard 208 controls. Allowing claims like petitioners' to proceed gives individual state juries free reigns to decide the parameters of the law, which Congress has entrusted only to specifically-identified expert federal agencies. The reasoning for this is simple – they are the only agencies qualified to do so. State tort judgments that operate with the force of federal legislation upset the Constitution's hierarchy of laws and the civil justice

system's ability to function properly and efficiently. This case presents the Court with an opportunity to pay homage to the legislative intent that has served as this Court's cornerstone in deciding preemption cases over the last four decades. In so doing, only one conclusion can be reached. Petitioners' common law claim is preempted.

CONCLUSION

For the foregoing reasons, the DRI urges this Court to affirm the lower court's decision.

Respectfully submitted,

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